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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In Re the Conservatorship of the Person and Estate of:

BRITNEY JEAN SPEARS,

Temporary Conservatee.

CASE NO. BP 108870

DATE: October 28, 2008
TIME: 8:30 a.m.
DEPT: 9
JUDGE: Commissioner Reva Goetz

OPPOSITION TO *EX PARTE* APPLICATION FOR ORDER GRANTING PROTECTIVE ORDER AGAINST DEPOSITION OF TEMPORARY CONSERVATEE BRITNEY SPEARS IN FLORIDA ACTION

PLEASE TAKE NOTICE that interested parties, WRIGHT ENTERTAINMENT GROUP, LLC, and WRIGHT ENTERTAINMENT GROUP, INC., (hereinafter referred to collectively as "WEG"), respectfully submit the following Opposition to the Temporary Co-Conservators' *ex parte* application for Order Against Deposition of Temporary Conservatee Britney Spears in the matter of *Wright Entertainment Group, LLC, et al., v. Britney Spears, et al.*, Orange County, Florida, Circuit Court Case No. 48-2007-CA-014233, filed October 26, 2007 (the "Florida action").

Dated: October 27, 2008

Respectfully submitted,

McKENNA LONG & ALDRIDGE LLP

By: _____

William J. Sayers
Farah Nicol
Matthew K. Ashby

Attorneys for Specially Appearing Interested Party
WRIGHT ENTERTAINMENT GROUP, LLC, and WRIGHT ENTERTAINMENT GROUP, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

WRIGHT ENTERTAINMENT GROUP, LLC and WRIGHT ENTERTAINMENT GROUP, INC. (hereinafter referred to collectively as "WEG" or "Plaintiffs" in the Florida action), oppose the Ex Parte Application for Order Granting Protective Order Against Deposition of Temporary Conservatee, Britney Spears (hereinafter "Application"), for the following reasons: (1) a protective order cannot be granted on an ex parte basis, (2) the Florida Court has exclusive jurisdiction – via applicable case law, statute and stipulation – over discovery matters concerning real parties in interest to the Florida action; (3) Conservators cannot show "good cause" for a protective order; and (4) Plaintiffs will ask the Florida Court to enjoin Conservators' efforts to interfere with Florida jurisdiction.

I. PROCEDURAL BACKGROUND

1. The Plaintiffs (WEG) managed the career of BRITNEY JEAN SPEARS from 1999 to 2003, and have managed other well known recording artists such as Justin Timberlake, Janet Jackson, the Backstreet Boys, NSYNC, and others.

2. Plaintiffs filed a Complaint against the BRITNEY JEAN SPEARS (hereinafter "SPEARS" or "Conservatee") and BRITNEY TOURING, INC. (hereinafter "BTI") (collectively "Defendants" in the Florida action) in the Ninth Judicial Circuit Court in and for Orange County, Florida on October 26, 2007, and served Conservatee personally.

3. This matter involves an effort by James P. Spears and Andrew Wallet, Esq., the temporary conservators (hereinafter collectively "Conservators"), over the person and estate of the Defendant Conservatee and BTI to by improper ex parte application, circumvent a stipulation and agreed order for Florida jurisdiction over discovery matters pending in the Florida litigation. The Conservators attempt to forum shop for a protective order in the California courts is improper and violates their agreement and Florida court orders. Additionally, the Conservators seek to extend the findings of this Court regarding incapacity to improperly insulate the Conservatee to force Plaintiff to return to the California court for an order permitting depositions.

4. The Conservators appeared in Plaintiffs' breach of contract action filed a year ago in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida under Case No.: 48-2007-CA-014233-O (the "Florida action") on March 24, 2008.

5. The Orders appointing James P. Spears and Andrew Wallet, Esq. as Conservators of the estate of the Defendant SPEARS were filed under seal in the Superior Court of the State of California and not furnished to the Plaintiffs until March 24, 2008[1]. A status hearing was set for October 28, 2008.

6. The first order appointing a temporary conservator over Defendant SPEARS, dated February 1, 2008, was filed under seal and expired on February 4, 2008. This first order gave the Conservator authority ONLY over the litigation "related to the family law case" (her divorce), and not the case before the Florida court.

7. The second order, filed February 6, 2008, extended the conservatorship to February 14, 2008 and expanded the Conservator's authority to cover all litigation. This order references the declaration of Dr. J. Evan Spar relating to capacity, but no report has been provided to Plaintiffs to date.

8. The third order, dated February 14, 2008, extended the conservatorship until March 10, 2008.

9. The fourth order, dated March 5, 2008, extended the conservatorship until July 31, 2008, and this order was extended until December 31, 2008.

10. On December 18, 2007, the Clerk of the Circuit Court for Orange County, Florida, entered a Clerk's Default against SPEARS and BTI.

11. On February 12, 2008, Plaintiffs moved for Final Judgment and on February 14, 2008, Final Judgment was entered against Defendants on the issue of liability only, reserving final judgment as to damages until trial.

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[1] The Motion was filed on the same day that SPEARS made a nationwide appearance on a national television show "How I Met Your Mother" which received rave reviews.

12. Upon stipulation of the parties, including the Conservators herein, on April 29, 2008, the Florida court issued its Agreed Order Vacating Final Default Judgments wherein Defendants consented to:

a. the jurisdiction of the Florida Court,

b. that SPEARS provide an accounting under Plaintiffs' management agreement;

c. to serve their answer and affirmative defenses to the complaint, and

d. that the Florida court would retain jurisdiction to enforce all matters related thereto. (*See* Exhibit "A" hereto – "Agreed Order Vacating Final Default Judgments").

These terms were specifically negotiated in consideration for setting aside the default judgments against the Defendants.

13. On May 9, 2008, the Florida court issued a Case Management Order governing the conduct of the parties as to all discovery issues. Therefore, the Florida court retained jurisdiction to enforce all discovery disputes between the parties.

14. On May 14, 2008, the Conservators further consented to the jurisdiction of the Florida courts and venue in Orange County by their filing of Defendants' Answer and Affirmative Defenses to Complaint.

15. Furthermore, the Conservators admitted in their Answer that Plaintiffs are entitled to an accounting of the Gross Receipts pursuant to the personal management contract which was attached to the complaint and that SPEARS formed Britney Brands, Inc., Britney Films, Ltd., Britney Television, LLC, The Britney Spears Foundation, Britney On-Line, Inc., Britney Management Corporation, One More Time Music, Inc. and SJB Revocable Trust.

16. Plaintiffs have waited patiently for many months to take SPEARS' deposition, and noticed the same on October 14, 2008 for November 17, 2008. SPEARS' new album is set to release on December 2, 2008 and, upon information and belief, SPEARS will be appearing on "Good Morning America" and touring internationally to support the album release, potentially causing further delay in the opportunity to depose SPEARS.

17. The Defendants recently moved the Florida court to assert counterclaims and to amend their affirmative defenses, which further supports Plaintiffs' need for discovery and depositions.

18. From SPEARS' recent public appearances on Music Television (MTV), various television series, album promotional events, and television interviews for international audiences, it is reasonable to expect that SPEARS may give testimony before the temporary conservatorship terminates, or if she is incapacitated, the Conservators provide evidence of such sufficient to meet her burden for a protective order. None have been preserved, not even in the current Application.

19. On October 21, 2008, counsel for the Conservators called Plaintiffs' counsel to announce an ex parte hearing on October 22, 2008 without formal notice or papers. Plaintiffs' counsel agreed to appear at a hearing if the date were moved, and he were permitted to appear; it was also agreed that Plaintiffs' counsel may appear by phone and that moving papers would be provided immediately, which they were not.

20. As of October 27, 2008, Plaintiffs were not provided with declarations or any evidence of SPEARS' capacity, notwithstanding the fact that Commissioner Goetz ordered a status conference related to SPEARS' conservatorship, which ostensibly means such information is currently available and could be produced to Plaintiffs.

21. The Conservators' Application subverts the express provisions of the choice of law and forum stipulations memorialized in the Florida court's orders and Defendants' own Answer. Plaintiffs initially agreed to appear at this hearing only and never agreed to the California courts authority to enter an order. Plaintiffs note that they initially agreed to refrain from an action to compel the deposition in the Florida Court and have not done so to date. However, Defendants and Conservators filed an Application with terms that were not agreed to and, in addition to the instant opposition, Plaintiffs are proceeding to seek an injunction against the Application.

22. Defendants have the burden to demonstrate SPEARS' incapacity, yet they still present no competent admissible evidence that Defendant SPEARS is incompetent at the present

time. They cannot rely on eight (8) month old conservatorship orders that have been obtained by Plaintiffs from the internet.[2] Worse, the Defendants have made the gravamen about jurisdiction.

II. THE CALIFORNIA COURT SHOULD DENY THE APPLICATION FOR PROTECTIVE ORDER FOR THE DEPOSITION OF BRITNEY JEAN SPEARS

A. A Protective Order *Cannot* Be Granted on an Ex Parte Basis.

The instant ex parte application is procedurally improper. There is no statutory authority for a court limiting discovery on its own motion. A formal noticed motion and hearing are always required. A protective order *cannot* be granted ex parte. Weil & Brown, *California Practice Guide: Civil Procedure Before Trial* (TRG 2008) at § 8:686- 8:687, pp. 8E-97 to 8E-98 citing St. Paul Fire & Marine Ins. Co. v. The Superior Court of San Mateo County (1984), 156 Cal.App.3d 82, 85-86. This is especially true in this circumstance as complex issues of fact and law exist. Due process requires a noticed motion. Accordingly, the ex parte Application must be denied as an improper motion for a discovery order without proper notice and opportunity for the Plaintiffs to be heard.

B. The Florida Court has Exclusive Jurisdiction Over Discovery Matters

1. California Code of Civil Procedure § 2029.010 does not vest this Court with jurisdiction to enter a protective order as to a party in an action pending in a foreign jurisdiction.

WEG expects that Conservators will argue that this Court has redundant and duplicative jurisdiction under Section 2029.010 to enter a protective order. Conservators are wrong. California Code of Civil Procedure § 2029.010 applies to *non-party* deponents only. *See Deposition in Out-of-State Litigation*, 37 Cal. L. Revision Comm'n Reports 99 (2007) at pp. 107 (stating CCP § 2029.010's purpose is to serve only as a provision for "ascertaining the truth and achieving justice in an out-of-state proceeding" because "an out-of-state tribunal may be unable to compel discovery from a *non-party* witness located in California") (emphasis added); *id.* at 140 (noting that the UIDDA acknowledges that the discovery state's "significant interest in these

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[2] A "Section 730 psychological report" by Stephen Marmer, M.D., Ph.D., was ordered by the California court on February 14, 2008 under the California Evidence Code, but has not been provided to Plaintiffs.

cases [is] in protecting its residents who become *non-party* witnesses in an action pending in a foreign jurisdiction") (emphasis added). Ms. Spears is a party to the Florida action. She is not a non-party witness in an action pending in a foreign jurisdiction. As such, California Code of Civil Procedure § 2029.010 does not apply.

Even if California Code of Civil Procedure § 2029.010 applied to parties (rather than innocent non-party witnesses residing in California) to the out-of-state litigation (which it should not), as explained below, there is still an "agreement"[3] and order that discovery is an issue properly presented to the Florida Court only.

2. The Parties' Choice of Law and Forum Stipulation Necessarily Govern Jurisdiction

Notwithstanding the disputed applicability of California Code of Civil Procedure § 2029.010, Conservators expressly stipulated to an Order (1) vesting the Florida courts with exclusive jurisdiction over the claims arising out of the management agreement, and (2) indicating that the dispute would be governed procedurally by Florida law.

Both Florida and California courts strictly enforce contractual choice of law agreements. Here, the parties have submitted to the jurisdiction of the state courts of the state of Florida for all claims, disputes or disagreements arising out of the Florida action. The law in Florida is clear that forum selection clauses are presumptively valid and should be enforced. *See* Corsec, S.L. v. VMC International Franchising, LLC, 909 So.2d 945 (Fla. 3rd DCA 2005). If the contract unambiguously requires litigation to be brought in a particular venue, it constitutes reversible error for the trial court to fail to honor that contractual obligation. Ware Else, Inc. v. Ofstein, 856 So.2d 1079 (Fla. 5th DCA 2003).

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[3] California Code of Civil Procedure § 2029.010 states: "Whenever any mandate, writ, letters rogatory, letter of request, or commission is issued out of any court of record in any other state, territory, or district of the United States, or in a foreign nation, or whenever, on notice or *agreement*, it is required to take the oral or written deposition of a natural person in California, the deponent may be compelled to appear and testify, and to produce documents and things, in the same manner, and by the same process as may be employed for the purpose of taking testimony in actions pending in California." (Emphasis added.)

In Florida, choice of law provisions are deemed presumptively valid and will be enforced unless the law of the chosen forum contravenes pubic policy. In Walls v. Quick & Reilly, Inc., 824 So.2d 1016 (Fla. 5th DCA 2002), the court held that choice-of-law provisions are valid unless the party seeking to avoid enforcement of them sufficiently carries the burden of showing that the foreign law contravenes strong public policy of the forum jurisdiction. The term "strong public policy" means that the public policy must be sufficiently important that it outweighs the policy protecting freedom of contract. Defendants must overcome the presumption that the choice of forum provision is invalid as it is Defendants who have sought to avoid enforcement. *Id.*

When all the parties to an agreement have designated a particular jurisdiction as the forum for the resolution of their disputes, such a forum selection clause is prima facie valid and should be enforced unless unreasonable under the circumstances. A forum selection clause will only be set aside if a party shows that enforcement would be unreasonable and unjust or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court. *See* Tuttle's Design-Build, Inc. v. Florida Fancy, Inc., 604 So.2d 873 (Fla. 2nd DCA 1992), and Southwall Technologies, Inc. v. Hurricane Glass Shield, 846 So.2d 669 (Fla. 2nd DCA 2003). The protective order is an intentional and blatant attempt to forum shop judicial intervention outside of Florida while keeping everything else about the litigation in Florida.

The California courts strictly enforce forum selection clauses. The law in California is clear that forum selection clauses are presumptively valid and must be enforced unless the plaintiff sufficiently carries its heavy burden of showing that enforcement of the clause would be unfair or unreasonable under the circumstances. *See* Furda v. Superior Court (1984) 161 Cal.App.3d 418, 426-427 (existence of forum selection clause providing for litigation in Michigan required the court decline jurisdiction under Cal. Civ. Proc. Code § 410.30); Lifeco Services Corp. v. Superior Court (1990) 222 Cal.App.3d 331, 386 (existence of forum selection clause selecting Texas as forum for all disputes required cross-complaint to be tried in Texas, despite fact that plaintiff had initiated action in California and maintained offices in California);

Net2Phone, Inc. v. Superior Court (2003) 109 Cal.App.4th 583 (granting motion to stay on grounds that forum selection clause in contract required actions to be brought in New Jersey); Intershop Communications v. Superior Court (2002) 104 Cal.App.4th 191 (commanding trial court to enforce forum selection clause designating Hamburg, Germany as the place of jurisdiction).

In California, choice of law provisions are deemed presumptively valid and will be enforced if (1) the chosen state has a substantial relationship to the parties or their transaction, or (2) there is some other reasonable basis for the parties' choice of law, and (3) application of the law of the chosen state would not be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of Restatement (Second) Conflicts of Laws § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties. RESTATEMENT (SECOND) CONFLICTS OF LAWS § 187; Nedlloyd Lines B.V., 3 Cal.4th at 465; Guardian Savings & Loan Assn. v. MD Associates (1998) 64 Cal.App.4th 309, 316-317, 75 Cal.Rptr.2d 151.

Here, SPEARS and the Conservators expressly stipulated to an Order (1) vesting the Florida courts with exclusive jurisdiction over the claims arising out of the management agreement, and (2) indicating that the dispute would be governed procedurally by Florida law. Furthermore, SPEARS has recently asserted a counterclaim in the Florida courts mandating discovery. Therefore, Florida has a substantial relationship to the parties and the transaction, whereas California has no relationship to the underlying issues whatsoever, except as to the conservatorship order, which my contain findings that should be considered by the Florida court. Also, SPEARS is a Louisiana resident. Even if SPEARS could show that California bears some relationship to the parties and/or the transaction, it is evident that any such relationship is subordinate to Florida's relationship to the parties and the stipulated order. Under such

circumstances, there is no basis for disregarding the Florida forum selection and choice of procedural law stipulations – they should be enforced.[4]

The Conservators' position that issues of discovery disputes (i.e., a protective order) are subject to California law violates California's conflict of law principles. First, the stipulated order does not state that California law governs discovery issues. Moreover, even if SPEARS' capacity could somehow be found as allowing some law other than Florida law to govern discovery issues (which interpretation should be rejected), conflict of law principles militate strongly against such an interpretation. To wit, the first two elements in § 187 of the Restatement have not been met, as neither the parties nor the transaction bear much relationship to California, and there is no other reasonable basis for applying California law to any discovery issues.

Nor has the third element been met. Application of California law contravenes the fundamental public policy of Florida (which has a materially greater interest than California in determining the progress of its court cases), and in the absence of an effective choice of law by the parties, traditional conflict of law principles dictate that Florida law should govern all issues under the agreement.

a. The Conservators and Defendants Are Estopped From Challenging The Choice Of Forum And Choice Of Procedural Law Stipulations

The Stipulation entered into by the Defendants and the Conservators and the resulting Case Management Order (*see* Exhibits "A" – "Agreed Order Vacating Final Default Judgments," and Exhibit "B" – "Case Management Order"), as well as Defendants' Answer, provided for the exclusive jurisdiction of the Florida courts. Defendants subjected themselves to the state courts of the State of Florida and Orange County, Florida as the exclusive venue to resolve discovery disputes. Defendants and Conservators should be estopped from seeking avoidance of their stipulation and orders entered by the Florida court.

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[4] Even assuming that Cal.Civil Code allows California law to govern issues of non-party depositions and discovery, under appropriate circumstances the Florida Circuit Court could apply California law to the limited issue of depositions and discovery, while applying Florida law to issues involving interpretation, performance and breach.

b. It is Sanctionable for the Conservators to Invoke California Jurisdiction after Stipulating to Florida Jurisdiction on Discovery Matters

The Conservators have made no motion in the Florida Court that has jurisdiction in this matter. While Plaintiffs may agree that the Florida Court may consider the findings of the California court related to SPEARS' capacity, these findings are dated and inconclusive of whether the deposition is an "undue burden" as defined by either Florida law or by California Code of Civil Procedure § 2025.420(a).

C. Requirements for a Protective Order Can Not Be Met: Defendants Have Not Proven Spears Is Incapacitated at Present Sufficient for "Good Cause"

The burden is on the moving party to establish "good cause" for whatever relief is requested: "Generally, a deponent seeking a protective order will be required to show that the burden, expense, or intrusiveness involved in [the discovery procedure] clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." Weil & Brown, *California Practice Guide: Civil Procedure Before Trial* (TRG 2008) at § 8:689, p. 8E-98 citing Emerson Electric Co. v. Superior Court (1997) 16 Cal.4th 1101, 1110.

1. The Ex Parte Application Is An Improper Attempt to Shift the Moving Party's Burden of Proof to WEG.

The Order requested by the instant ex parte Application is little more than an artful attempt to reverse the above burden by using (stale) findings, from conservatorship proceedings in which WEG did not participate, as irrebuttable proof that the burden, expense, or intrusiveness of the deposition clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. However, the Conservators' Application for protective order must not be allowed to provide the Defendants a "generalized exemption from discovery on the basis of incompetency [which] is unprecedented and insupportable." Regency Health Services, Inc. v. The Superior Court of Los Angeles County (1998), 64 Cal.App.4th 1496, 1504 (finding that: 1) the ward has no general right to evade discovery, 2) an incompetent party, unable to comply with his or her discovery obligations, would be subject to sanctions for failing to comply, and 3) no litigant has a legitimate interest in evading his or her obligation to provide truthful discovery).

There is no authority that supports such presumptive burden shifting. As noted in Regency Health Services, Inc. v. The Superior Court of Los Angeles County (1998), 64 Cal.App.4th 1496, 1500, when concluding that a ward is not exempt from discovery, the Court of Appeal reasoned that "if a party could obtain broad exemption discovery obligations simply by appointment of a guardian ad litem [or conservator], applications for such appointments would expectably be a major litigation battleground, since such applications would serve as *de facto* motions for exemption from discovery...None of this has happened, however."

Specifically, Conservators seek an Order providing that WEG may not take the deposition of Britney Spears in the Florida action unless and until this Court terminates the temporary conservatorship or enters an Order finding that Ms. Spears is able to be deposed, whichever is earlier. In other words, WEG may not take the deposition until WEG successfully terminates the conservatorship or successfully moves the Court for an order finding that Ms. Spears is able to be deposed. Even if such burden shifting were proper (which it is not), it is completely impractical and illogical as there can be no way WEG could ever meet this burden as WEG has no access to Ms. Spears to marshal the requisite evidence.

2. Conservators Cannot Meet Their Burden of Proof for Entitlement to a Protective Order

The Conservators cannot meet their burden. They must provide evidence of incapacity. In Leinberger v. Leinberger, 455 So.2d 1140 (Fla. 2nd DCA 1984) unadjudicated incapacity was proven by testimony as to appellant's manic depression psychosis and her admission to a mental hospital six times at the time she was served and in the years thereafter.

Respectfully, anecdotal evidence of SPEARS' capacity sufficient to appear at a deposition seems present. SPEARS was executive producer of a million plus selling album entitled "Blackout" released in November 2007. She was personally served the Summons and Complaint on November 1, 2007 before she drove herself away. SPEARS was recorded by paparazzi dining, shopping, and driving her car during October and November 2007. SPEARS performed on the MTV Music Awards on September 9, 2007, and she appeared on the CBS sitcom, "How I

Met Your Mother" on March 24, 2008 with the Conservator's approval who personally signed the contract according to media reports.

The Conservatee is apparently has capacity for some purposes. SPEARS just recently conducted public performances on MTV, recorded a new album set to release on December 2, 2008, performed in music videos, and conducted interviews on television. SPEARS has contracted with AEG for a world tour and appears on the nationally syndicated show "Good Morning America" on December 2, 2008. The Fifth District Court of Appeal has held that while a person's "atypical, alcohol-influenced acts.... were inappropriate and abnormal, they did not support conclusions that she was 'incompetent due to incapacity, due to lack of emotional stability'" Clark v. School Board of Lake County, Fla., 596 So.2d 735 (Fla. 5th DCA 1992) where the court noted there was no expert testimony presented as to incapacity.

3. Further Inquiry Is Necessary

Defendants have promised Plaintiffs copies of the declarations that support the Conservators' Application for a week, but as of October 27, 2008, none have been produced. Defendants' blanket assertions (i.e. of incapacity) are insufficient to meet their burden for a protective order as they can not constitute competent substantial evidence in accordance with the rules of evidence. Defendants offer no affidavits or admissible evidence of incapacity, only conclusory assertions regarding eight-month old findings in prior orders offered in their application for a protective order. Conservators, James Spears and Andrew Wallet, have no competent, personal knowledge of any alleged "facts" sufficient to support a protective order based on incapacity. No "facts" have been proffered for their Application for a protective order, which thereafter lacks foundation, as there is no admissible evidence.

Even if this Court had received affidavits, such must be made on personal knowledge, show that the affiant is competent to testify and contain admissible evidence. Harrison v. Consumer Mortgage Co., 154 So.2d 194 (Fla. 1st DCA 1963); American Baseball Cap, Inc. v. Duzinski, 308 So.2d 639 (Fla. 1st DCA 1975). Here, apparently the only persons with knowledge as to SPEARS' incapacity are the court ordered psychologists who appear to have made no recent findings as to SPEARS' current alleged incapacity to give testimony.

Any testimony from a Conservator is inadmissible unless evidence is introduced which is sufficient to support a finding that the witness had personal knowledge of the facts. Florida Statutes § 90.604. There is no evidence that the Conservators have any competent knowledge of any alleged "facts" sufficient to justify a protective order. If SPEARS' court appointed psychologist were asked to opine, then his findings should be in a supplement to his "Section 730 Report" from eight months ago and presented to the Florida court. Before entering a protective order, this Court should order an evidentiary hearing, or permit the Plaintiffs discovery as to incapacity.

D. Plaintiffs Will Ask the Florida Courts to Enjoin the Conservators' and the Defendants' Efforts to Interfere with Florida Jurisdiction

Plaintiffs are entitled to, and will seek, an injunction enjoining the Conservators and Defendants from undermining the choice of forum and choice of procedural law stipulation and orders. The use of injunctive relief to enforce forum selection has been upheld as a proper exercise of discretion in this very instance. Courts have likewise used injunctive relief to enforce a forum selection agreement. *See* AutoNation, Inc. v. Hankins, No. 03-14544 CACE(05) (Fla. 17th Cir. Ct Nov. 24, 2003).

Rather than resolve the parties' dispute in an appropriate and agreed location, Conservators seek to drag Plaintiffs into a forum which will result in Plaintiffs having to litigate discovery issues in two jurisdictions. Plaintiffs will be subjected to irreparable harm if they are forced to engage in duplicative litigation and unnecessary expense. Absent the issuance of an injunction, the Conservators will be able to circumvent the choice of forum and choice of law stipulation they previously agreed to. Injunctive relief is necessary to prevent Defendants from further trampling upon the rights of Plaintiffs.

III. CONCLUSION

Based on the foregoing, Plaintiffs request that the Court deny Conservators' Application.

Dated: October 27, 2008

Respectfully submitted,

McKENNA LONG & ALDRIDGE LLP

By: _____

William J. Sayers
Farah Nicol
Matthew K. Ashby

Attorneys for Specially Appearing Interested Party
WRIGHT ENTERTAINMENT GROUP, LLC, and WRIGHT ENTERTAINMENT GROUP, INC.

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

WRIGHT ENTERTAINMENT GROUP, LLC and WRIGHT ENTERTAINMENT GROUP, INC.,

Plaintiff(s),

CASE NO.: 48-2007-CA-014233-O

vs.

BRITNEY SPEARS and BRITNEY TOURING, INC.,

Defendant(s). /

AGREED ORDER VACATING FINAL DEFAULT JUDGMENTS

THIS CAUSE came before the Court upon Defendants' Verified Motion to Set Aside Final Default Judgments and Incorporated Memorandum of Law and Plaintiffs' Response to Defendants' Verified Motion to Set Aside Final Default Judgments; and Plaintiffs' Motion to Strike Improper and Inadmissible Evidence and Plaintiffs' Renewed Motion for Final Default Judgment as to Liability and Incorporated Memorandum of Law, and Defendants' agreement to waive any objections regarding this Court's jurisdiction, Defendants' agreement that Plaintiffs are entitled to an accounting for Gross Receipts as defined in the Agreement attached as Exhibit A to the complaint for the period set forth therein and in subsequent amendments to the Agreement as set forth in Exhibits B and C to the

Exhibit "A"

complaint, and the parties having agreed to entry of this Order, and the Court being duly advised in the premises, it is thereupon

ORDERED and **ADJUDGED** as follows:

1. The Clerk's defaults entered on December 18, 2007 and the final default judgments as to liability entered on February 14, 2008 against Defendants Britney Spears and Britney Touring, Inc. are vacated.

2. Defendants shall have 15 days from the date of this Order to serve their answer and defenses to the complaint.

3. Defendants shall serve responses to Plaintiffs' First Set of Interrogatories and Plaintiffs' First Request for Production of Documents within 10 days from the date of this Order.

4. The Court adopts the parties' agreements set forth herein and retains jurisdiction to enforce them.

DONE and **ORDERED** in chambers, Orange County, Florida this 29th day of April, 2008.

/s/ RENEE A. ROCHE

RENEE A. ROCHE, CIRCUIT JUDGE

Copies to:
Counsel of Record
5302005_v2

Exhibit B

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

WRIGHT ENTERTAINMENT GROUP, LLC and WRIGHT ENTERTAINMENT GROUP, INC.,

Plaintiffs,

vs. CASE NO.: 07-CA-014233

BRITNEY SPEARS and BRITNEY TOURING, INC.,

Defendants.
_____/

CASE MANAGEMENT ORDER

THIS CASE came before the Court on the 8th day of May, 2008 for a Case Management Conference. This case has been assigned to Division 32, Business Court pursuant to Administrative Order No.: 2003-17 in the Ninth Judicial Circuit, Orange County, Florida. After reviewing the Joint Case Management Report, and being otherwise fully informed, it is

THEREFORE, ORDERED AND ADJUDGED that unless later modified by Order of this Court, the following schedule of events shall control the management and proceedings in this case.

Exhibit "B"

COMMUNICATION WITH THE COURT AND AMONG THE PARTIES

1. The parties are represented by the following who shall be designated "Lead Trial Counsel":

Clay M. Townsend for Plaintiffs;

Judith M. Mercier for Defendants.

2. **All pleadings filed herein shall be filed electronically.**

PRELIMINARY FINDINGS AND DEADLINES

3. Any motions for leave to amend the pleadings to add additional parties or otherwise, shall be filed no later than October 1, 2008.

4. The Parties have stipulated and it is ordered that this case shall be tried in March, 2010.

5. The parties are directed to comply in all respects with the Business Court Procedures located at:

http://www.ninthcircuit.org/about/divisions/civil/complex-business-litigation-court.shtml .

MOTIONS, DISCOVERY, ALTERNATIVE DISPUTE RESOLUTION AND TRIAL

6. Any motions to dismiss or other preliminary or pre-discovery motions shall be filed and briefed on or before November 1, 2008.

7. The trial of this case shall occur during the trial period beginning March 9, 2010. The parties estimate the trial will be completed in five (5) days.

8. A pre-trial conference is scheduled on March 1, 2010 at 1:30 p.m. in the Hearing Room of the judge then assigned to Division 32. The parties shall prepare in advance and provide at the pre-trial conference a pre-trial statement comporting with BCR 9.2.

9. The parties shall have until January 8, 2010 to conduct and conclude discovery. It is further ordered that the setting of the discovery deadline will not limit any party from filing summary judgment motions during the period, but any such motions should be narrowly drawn to address only issues on which discovery has been completed. If there are still motions pending after the discovery period, the Court will set a briefing schedule at that time.

10. On or before June 30, 2008, the Parties shall exchange lists of key witnesses they believe may have knowledge of the facts underlying the dispute in this case. The lists shall identify the matters about which the Parties believe the witness has knowledge and shall include the witnesses' name and last known address.

11. On or before August 29, 2008, the Parties shall exchange a detailed explanation of the type of damages they are seeking and a preliminary breakdown of the amount of damages they are seeking in each count contained in their respective pleadings.

12. The Parties are limited to two expert witnesses per side. The presumptive limitations on discovery contained in the Business Court Procedures are modified in certain respects, *to wit*, the Parties may take a total of twenty (20) depositions per side and may propound 100 interrogatories per side. In all other respects, the presumptive limitations shall apply, subject to further order of the Court.

13. The party bearing the burden of proof on any issue requiring expert testimony shall designate the experts expected to be called at trial and provide all information specified in BCR 7.5 by June 30, 2009.

14. The party responding shall then designate its experts and provide all information specified in BCR 7.5 by July 31, 2009.

15. Dispositive Motions shall be filed by January 18, 2010.

16. Motions in limine shall be filed by the date of the pretrial conference.

17. The parties shall mediate this case prior to the pre-trial conference. Plaintiffs counsel shall advise the Court, no later than October 31, 2009, in writing, of the date of the mediation and shall identify the mediator. Plaintiff's counsel is ordered to advise the Court, in writing, of the outcome of the mediation no later than five (5) days following the conclusion of the mediation conference.

18. Any request for accommodation under the Americans With Disabilities Act should be directed to the office of Court Administration for the

Ninth Judicial Circuit, in and for, Orange County, Florida or TTY for hearing impaired at (407) 836-2050.

DONE AND ORDERED in Orlando, Orange County, Florida this 9th day of May, 2008.

/s/Renee A. Roche
Circuit Judge-Division 32

cc: All counsel of record